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In The

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1955

No. 846

D. WOODROW WORTHINGTON,
Petitioner,

v.

COMMODITY CREDIT CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINION BELOW

The opinion of the Court of Appeals (which is printed as Appendix A) has not yet been reported. The opinion

of the District Court (which is printed in the Appendix filed by appellant in the Circuit Court, p. 125.) has been reported as *D. Woodrow Worthington* vs *Commodity Credit Corporation*, 157 F. Supp. 49[illegible].

JURISDICTION

The judgment of the Court of Appeals is dated and was entered on January 21, 1959 (App. A). Jurisdiction of this Court is invoked under 28 U. S. C. A. § 1254(1) (1952).

QUESTION PRESENTED

Does Commodity Credit Corporation have the legal authority to withhold price supports from any auction warehouse which the petitioner owns, operates, or in which he in any way has any interest on account of his prior record of having violated certain criminal provisions of the Tobacco Inspection Act, even though the said warehouses might be leased by him to entirely independent lessees and where the petitioner is not connected in any way with the operation or management of said warehouses, and even though the standard auction warehouse contracts through which price supports would be provided to said warehouses provide for suspension or cancellation in the event of any irregularity occurring in the operation of said warehouses which would adversely affect the administration of price supports?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Section 4 of Amendment V of the Constitution of the United States provides:

"No person shall be—nor be deprived of life, liberty, or property, without due process of law." U. S. C. A., Constitution, Amendment V, p. 172.

The action was instituted under the Declaratory Judgment Act, 62 Stat. 964, (1948), as amended, 28 U. S. C. A. § 2201, printed in full in Appendix B.

The pertinent provisions of the Agricultural Act of 1949, 63 Stat. 1051, as amended, 7 U. S. C. A. § 1421, et. seq., are printed in full in Appendix B.

The pertinent provisions of the Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended, 15 U. S. C. A. § 714, et. seq., are printed in full in Appendix B.

STATEMENT OF THE CASE

This action was brought in the District Court for a declaration of rights pursuant to the Declaratory Judgment Act between the petitioner, a tobacco auction warehouseman, and the Commodity Credit Corporation, which is an agency of the United States created by an Act of Congress. The petitioner seeks to test the validity of an administrative decision, reached without any prior hearing being afforded to the petitioner, by which the respondent has denied price supports to tobacco sold through any tobacco auction warehouse in which the petitioner has any interest. The respondent has enforced its ruling to the extent that if petitioner has any interest whatever, whether as independent lessor, purchase money mortgagee, or otherwise, said warehouse shall not be eligible for price supports. (App. pp. 26-27).*

* All references are to the printed appendix to appellants' briefs below, copies of which are filed with this petition.

Until 1955, the petitioner owned ten tobacco auction warehouses, some of which he had, until 1954, operated, and most of which were leased by him to other tobacco auction warehouse operators. He had owned warehouses since 1943 (App. 16). The tobacco business is the only trade or profession known to him, he having spent his lifetime in the business. (App. 16). These warehouses, worth about a million dollars, were located in Kentucky and North Carolina (App. 16). At the time of the institution of this action he owned one warehouse, known as the Big "L" Warehouse, in Bladen County, North Carolina (App. 19). There had always been price supports for tobacco in this warehouse prior to its acquisition by the petitioner. (App. 19).

In 1951 and 1952 the petitioner is alleged to have committed misdemeanors by violating certain provisions of the Tobacco Inspection Act, and was subsequently convicted and paid substantial fines for said violations. In the 1953-54 season in Kentucky, respondent contends that nested tobacco was received from the petitioner at a redrying plant at Shelbyville, Kentucky, which was subsequently returned to the petitioner. The respondent has frequently found irregularities in the petitioner's tobacco operations, and there was evidence that his reputation among buyers is very poor as they seriously question his integrity. In spite of this, however, respondent enjoys an excellent reputation with the tobacco producing farmers (App. 60 & 126). In July of 1955, the respondent corporation by letter advised the petitioner that "price support will not be made available through any auction warehouses which D. Woodrow Worthington, Winterville, N. C., owns, operates, or in which he in any way has an interest." (App. 126). The petitioner has been advised that

a warehouse leased by President Eisenhower would not be granted price supports so long as it was owned by the petitioner (App. 41). The petitioner is the only warehouse owner or operator in the United States who has ever been denied a contract for price supports before the beginning of a season. (App. 34). This was according to the director of the Tobacco Division of Commodity Stabilization Service.

In keeping with its decision, the respondent has refused to extend price supports through any tobacco auction warehouse which the petitioner owned, operated, or in any way had an interest with the exception of the 1955 season. During the 1955 season, price supports were extended through a tobacco auction warehouse business carried on by a lessee in a warehouse owned by the petitioner, because the lease had been executed prior to the administrative decision. (App. 24). Respondent contends that it subsequently learned that the petitioner in fact actively participated in the operation of that business; however, according to the Director of the Tobacco Division, the warehouse was operated in that year "in a good and sufficient and suitable manner suitable to every agency of the Commodity Credit Corporation." (App. 38). Since that time, because of respondent's suspicion that petitioner actively participated in the business that year, even though it was suitably operated, the respondent has refused to extend price supports through a tobacco auction business carried on by a lessee of the petitioner, and it is the present intention of Commodity Credit Corporation to effectuate its decision to its exact letter. The present position of Commodity Credit Corporation is that the petitioner shall never so long as he lives be permitted to receive the ben-

fits of price supports in his warehouses regardless of how independent the lessee of the warehouse might be from the petitioner, and regardless of the fact that the petitioner shall participate in no manner whatever in the operation of said warehouses. (App. 59-60). This ruling has been clung to by respondent without regard to the fact that the standard auction warehouse contracts through which all tobacco price supports are administered, provide for cancellation or suspension in the event of wrongful operation by the warehouseman. (App. 120).

District Court Judge Gilliam held "that there was nothing to indicate that the physical makeup or location of the plaintiff's warehouse materially and relatively in any way differs from other tobacco warehouses" and "that the plaintiff, *as a landlord only*, appears *equal* to other tobacco warehouse owners." (App. 139). Therefore, His Honor ruled that the administrative decision of the respondent, as an agency of the United States, in so far as it denied auction warehouse contracts under the price support program to any warehouse in the management or operation of which the petitioner has not any actual direct interest and with respect to which the petitioner's position is solely that of lessor to a *wholly independent lessee*, or in which he has an interest, and in which he *does not actively participate in the management thereof*, was invalid for that it was a denial of petitioner's rights under the constitution of the United States, and without due process of law. WORTHINGTON v. COMMODITY CREDIT CORPORATION, 157 F. Supp. 497. (App. 141). The judgment of the Court of Appeals reversed this decision. (Appendix A).

REASONS FOR GRANTING THE WRIT

1. The question of whether or not the Commodity Credit Corporation has the unbridled discretion to deny price supports to any warehouse in which a person who has been convicted of tobacco law violations has any interest, regardless of that person's independence from the operation of said warehouse, is a question of federal law of great importance to the tobacco producing south which has not been, but should be, decided by the Supreme Court.

2. In deciding that Commodity Credit Corporation did have that unbridled discretion the Circuit Court has in the opinion of the petitioner decided an important federal question in a way in conflict with applicable decisions of the Supreme Court and has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the Supreme Court's power of supervision.

I.

The Right Of The Commodity Credit Corporation To Withhold Price Support Contracts From Any Tobacco Auction Warehouse Because Of A Particular Individual's Having An Interest In That Warehouse Is An Important Question Of Federal Law Which Has Not Been, But Should Be, Decided By The Supreme Court.

The right to profit from the use or lease of property in a particular business, that is, the right to the use of property beneficially, is a basic property right recognized by the Courts. *Standard Air Lines* v. *Civil Aeronautics Board*, 177 F. 2d 18 (D. C. Cir. 1949). The petitioner contends

that he is entitled to the beneficial use of his property just as other persons are. By their very nature, tobacco auction warehouses can be used for very few other purposes. The District Court found the facts in this regard to be as follows:

> "The Court recognizes the fact that the loss of this right is serious and of considerable magnitude, for tobacco auction warehouses can be used for few other purposes, primarily because of geographic location and physical structure. Sale offers little hope of restoring to the plaintiff the value of this right, for a forced sale seldom brings true value." (See page 136 and 137 of Appendix of Appellant filed in Circuit Court, copies of which were filed with this petition.)

There is no question but what the decision of Commodity Credit Corporation effectively removed petitioner's warehouses from competition. In that regard, the District Court said:

> "It is clear from the testimony that the refusal to extend price supports through a tobacco warehouse business removes it from competition. Naturally a non-price support warehouse cannot compete for the seller's business against a warehouse which in effect offers a guaranteed purchaser and price. The effect of the administrative decision in the case at bar is to deny the plaintiff the right to profit from engaging in or having his property used in the tobacco warehouse business. To argue otherwise is an abuse of intellectual integrity." (Page 136 Appendix filed in Circuit Court, also filed with this petition.)

The District Court further found that:

> "There is nothing to indicate that the physical make-up or location of the plaintiff's warehouse materially and relatively in any way differs from other tobacco warehouses. There appears no justification for refusing to extend price supports to a business carried on by a lessee, *wholly unaffected by the plaintiff*, in the plaintiff's warehouse. The plaintiff, *as a landlord only*, appears *equal* to other tobacco warehouse owners. To deny price supports to a tobacco auction business owned by a totally *independent* lessee solely because of the identity of the physical warehouse owner is arbitrary, malicious, and discriminatory, for the identity of such an independent warehouse owner is wholly irrelevant to the business operations and the purposes of the defendant corporation in accord with policy established by the legislative body." (Page 139 Appendix filed in Circuit Court, also filed with this petition.)

We are therefore faced with the question of whether an administrative agency of the Government may by withholding price supports from any warehouse owned by the petitioner or in which he has any interest deprive the petitioner of one of his basic property rights (i. e., the right to the beneficial use of his property) effectively removing his warehouse from competition and forcing the sale of his property, even though it has been found as a fact that petitioner's warehouse did not differ from other tobacco warehouses and that *as a landlord* petitioner was *equal to other warehouse owners*.

So far as the petitioner has been able to ascertain, this question had never been presented to any judicial tribunal in this country prior to the trial of this matter in the District Court. It is of great importance to the petitioner because of the fact that he has spent his entire life in the tobacco business and prior to 1954 was the owner of ten tobacco warehouses worth approximately a million dollars. Since 1955 he has been completely removed from the business in which he has spent his life, and has been forced to sell his property at great loss. The question is likewise of great importance to the tobacco producing southern region of this country where so many persons depend upon the operation of the tobacco industry for their livelihood. Under the present ruling of Commodity Credit Corporation this petitioner could purchase all of the tobacco auction warehouses in Wilson, North Carolina, and they would, for all practical purposes be removed from competition with other tobacco auction warehouses because no lessee of the petitioner, no matter how independent, would be considered for a price support contract; and thus, Wilson would be removed from its position of eminence as "The World's Largest Bright Leaf Tobacco Market". Every city, town, and hamlet in the tobacco producing region of this country could likewise be removed from competition as a tobacco market under the present ruling of the respondent. The economy of practically every municipality in the tobacco producing area of this country is greatly affected by its ability or inability to compete as a tobacco market. Could any tobacco market be destroyed in this manner? If the answer is "No", then it necessarily follows that the legality of the Circuit Court's ruling and the decision of Commodity is made to depend upon the matter of "degree". It would then

become obvious that the motive of the respondent is punishment of the petitioner by removing him from the business entirely. If the answer is "Yes", then the importance of the question posed by this petition is abundantly clear. Unless it can be said that this petitioner is the only person in the United States of questionable integrity who owns a warehouse which is used in the tobacco auction business, then it becomes manifest that under the administrative decision which has been upheld by the Circuit Court there are other warehouses which can be removed from competition and thereby rendered useless to their owners by administrative decision of the respondent without giving the owners of those warehouses any opportunity to hear the evidence against them, to cross examine their accusers, to present evidence in their own behalf, and to state their contentions before being deprived of their right to the use of their property. Petitioner earnestly contends that the rights of the respondent in that regard should be spelled out and made clear by the Supreme Court.

II.

In Deciding That Commodity Credit Corporation Had The Unbridled Discretion To Withhold Price Support Contracts From Any Warehouse In Which The Petitioner Has Any Interest, Without Any Prior Hearing Whatever, The Circuit Court Has Decided An Important Question Of Federal Law In A Way In Conflict With The Applicable Decisions Of The Supreme Court And So Far Departed From The Usual Course Of Judicial Proceedings As To Call For The Supreme Court's Supervision.

The Circuit Court's ruling that Commodity was correct in withholding contracts from any warehouse in which

the petitioner has any interest was based upon the assumption that the petitioner would not in the future remain *independent* from the operation of the warehouses. As far as the law of the case is concerned the Circuit Court's ruling found no fault with the opinion of the District Judge. In this regard, the Circuit Court said:

> "While the District Court was correct in saying that the identity of an *independent* warehouse owner is wholly irrelevant to the business operations and purposes of Commodity, Worthington's conduct patently demonstrated that he could not be trusted to separate himself from the business conducted on his premises and from its temptations." (App. A. p. 27).

Judicial proceedings should not be decided upon what the Court presumes the conduct of the parties will be in the future. Even if that were a proper basis upon which to decide judicial proceedings, it is manifest that the Circuit Court came to the wrong conclusion. That Court said:

> "In the light of his record of repeated gross and willful misconduct when afforded earlier chances, such an order would require government officials to monitor continuously the operations of any warehouse in which Worthington had an interest; or to face the risk, amounting to probability, of the misuse of public funds." (App. A p. 27).

This conclusion was reached upon the basis of two convictions for misdemeanors (App. A p. 24) which were

committed prior to the 1954-1955 season* and upon investigation which revealed that during the 1954-55 season Worthington rented one warehouse to a Mr. Hardy for a percentage of the profits, and had participated with a Mr. Bass in the operation and profits of another. (App. A p. 35). There was a complete absence of any showing that any fraud or other misconduct of any sort occurred in those warehouses during that season, and consequently no danger to the price support program was evident, although it is true that according to the government contentions Worthington did not completely disassociate himself with the tobacco business. The avowed purpose of Commodity was to have the petitioner get completely out of the tobacco business and stay out of it: and it is for that reason that the government has been dissatisfied with the arrangements made during the 1954-55 season. (Appellant's Appendix in Circuit Court, p. 72). It is also well to note in this connection that this petitioner has not had the opportunity, even in the District Court, to face the investigators who made the accusations against him and cross examine them. But the fact which demonstrates conclusively that the Circuit Court has reached the wrong conclusion is that all of the above-mentioned occurrences which the conclusion is based upon took place prior to the July, 1955, administrative order which is here complained of, and that the only opportunity that petitioner has had to demonstrate his ability and willingness to remain *independent* from the operation of his warehouses since that order was during the 1955 tobacco season when he was

* In the Appendix filed by Appellant in the Circuit Court, copy of which has been filed with this petition, i. is disclosed that the acts which transpired in petitioner's warehouses for which he was convicted occurred in 1951 and 1952, p. 25.

permitted to lease one warehouse to Mr. Dynamite Jones during which season said warehouse was operated in *"a good and sufficient and suitable manner suitable to every agency of the Commodity Credit Corporation"* and during that season *"the relationship between Mr. Worthington and Dynamite Jones in the operation of New Enterprise Warehouse was satisfactory"*. (Appellant's Appendix, Circuit Court, p. 38, Emphasis added). This was the uncontradicted evidence from the Director of the Tobacco Division. Thus, we see that even though it was demonstrated by petitioner on the only occasion his warehouse was permitted a contract since the order complained of that *he could remain independent* and that *the warehouse could be operated satisfactorily*, the Circuit Court has concluded that to permit him to operate in that manner again would be tantamount to giving him yet "another chance" which was not justified in the light of his record. (App. A p. 28). It is difficult for petitioner to understand how the conclusion of the Circuit Court could be logically reached in the light of this uncontradicted evidence.

It is true that the District Court Judge recognized the hazard involved and concluded that any reasonable doubt as to whether or not the warehouse was being operated independently "might justify a refusal or withdrawal of price supports", but it seems to petitioner that the District Court solved the problem in its recognition. Apparently, the District Court Judge felt that Commodity should have let the petitioner continue to lease his warehouses and have the benefit of price supports as long as they would be operated as the warehouse operated by Mr. Jones in 1955-56 season. And no doubt the District Court Judge also had in mind that there are provisions in the contracts entered into by the warehousemen by which the contracts may be suspended or withdrawn immediately upon the show-

ing of misconduct or irregularity. Apparently the Circuit Court completely overlooked this feature of the evidence, for it was not mentioned. According to the Defendant's exhibit D-7 on pages 119 and 120 of Appendix for Appellant filed in the Circuit Court (copies of which were filed with this petition), the standard auction warehouse contract contains the following provisions:

> "10. (a) The Association may at any time cease accepting tobacco tendered for delivery to it by the growers upon giving written notice to such effect to the Warehouse, and further, the Association, for cause, by giving written notice to the Warehouse, may suspend or terminate this contract and may give, if it so decides, public notice thereof including reasons for the suspension. Upon receipt of any such notice from the Association, the Warehouse shall not accept any further tobacco for delivery to the Association nor make any advance payment thereon on its behalf.
>
> (b) In any case which involves misuse of Government funds (Any action on the part of the Warehouse which results in the Association making a request for unauthorized Government funds), or involves willful violation, the Association may terminate the contract immediately or may suspend it for such period as the Association may determine."

With terms such as that in the contract, we find it hard to hard to conclude as the Circuit Court did that giving Worthington another chance would require government officials "to monitor continuously the operations of any warehouse in which Worthington had an interest; or to face the risk, amounting to probability, of the misuse of public funds" (App. A p. 28). We also note it to be passing

strange that with such provisions in the contracts no suspension or cancellation was ever made with any of the petitioner's warehouses even though he is accused of repeated gross and willful misconduct. Does not this provision in the contract negative the great hazard that the Circuit Court speaks of?

Petitioner also feels that it is well to note that the District Court Judge who saw the witnesses and heard them on the witness stand immediately recognized that the net effect of Commodity's order was to punish petitioner for offenses which he had already been tried for and paid the penalty (Appellant's appendix in Circuit Court, pp. 59, 60 and 61). Apparently, the Circuit Court completely disregarded this factor, yet even they saw the harshness of their ruling for they went out of the way to state that:

> "We do not preclude the possibility of further representations by the appellee to the agency with a view to revision of its present order. In that event, its course should be governed by circumstances as they may then exist." (App. A, p. 28).

It seems not to have even occurred to the Court that several tobacco seasons have passed during which petitioner has not been permitted the use of his warehouses in the support program, and that the position of Commodity even now is that petitioner's warehouses will never be granted another contract because there is no way he can demonstrate to Commodity that his warehouses would be operated satisfactorily without first being granted another contract. (Appellant's appendix in Circuit Court, p. 59). Thus, petitioner has been placed in the dilemma of a child whose

mother has told him, "Son, I am never going to let you go swimming until you learn how to swim." And the Circuit Court has left him right square in the middle of the dilemma with no solution whatever. The attitude of Commodity has been for several years and apparently will continue to be that petitioner and his attorneys can come and talk with them at any time, but they will still steadfastly stick to their position. (Appellant's appendix in Circuit Court, p. 41 and p. 59.)

There is serious doubt as to whether or not the Circuit Court understood the facts in the case at bar. Throughout its opinion the Circuit Court referred to Mr. Worthington as an "auctioneer" when as a matter of fact he is not and has not been an auctioneer, but a warehouseman. The Court in a large measure bases its opinion on the premise that the success of the price support program depends in great measure upon the diligence and integrity of the "auctioneer", and the conclusion that Worthington was an auctioneer when in fact he was not might have had an adverse effect.

In any event, petitioner contends that reasonable men would have to agree that he has not been afforded the benefits of the due process clause of the Fifth Amendment to the Constitution of the United States to which all persons are entitled. As District Court Judge Gilliam so ably pointed out, it would be an abuse of intellectual integrity to deny that the administrative decision in the case at bar had the effect of denying petitioner the right to profit from engaging in or having his property used in the warehouse business. Commodity, in the Courts below, relied upon the cases of *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113, and *Ellis* v. *United States*, 206 U. S. 246,

which state that there is no right to a government contract as a general proposition. As the District Judge pointed out, these cases are not in point because petitioner is not claiming a right to a government contract; he is not claiming that he has been denied expectant and hoped for profits resulting from government purchases; but is instead urging that the government cannot discriminate in contracting with his equals where the effect of such discrimination is to deprive him totally and absolutely of the right to profit from his property. The effect of the administrative decision in the case at bar has done just this. Nowhere has this petitioner had the opportunity to face his accusers, to hear the evidence placed before the administrative agency, to cross-examine the witnesses, or to offer evidence to refute that which was offered against him before the agency. The letter by which Commodity advised petitioner of the administrative decision came before any hearing whatever, and although Commodity's officers are willing to talk with petitioner and his attorneys they have not yet until this day afforded him any hearing in the judicial sense whatever.

> "The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them. The right to submit argument implies that opportunity; otherwise the right may be but a barren one. Those who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command." *Morgan* v. *U. S.*, 304 U. S. 1 (1937), page 18.

If the facts are as the District Court Judge found them to be that this petitioner *as a landlord only* is *equal* to other warehouse owners; that his warehouse does not differ physically from other warehouses; and that the effect of the administrative order is to deny to the petitioner the beneficial use of his property; then it necessarily follows that petitioner has been denied a valuable property right through arbitrary discrimination of a government agency without having been afforded any hearing whatever. Certainly that does not meet the demands of due process. As was so ably written by Mr. Justice Matthews in the famous case of *Yick Wo* v. *Hopkins*, 118 U. S. 356, at page 369:

> "When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for play and action of purely personal and arbitrary power. Sovereignty itself is, of course, not subject to law, for it is the author, and source of law; but in our system, while sovereign powers are delegated to the agencies of the government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. It is, indeed, quite true, that there must always be lodged somewhere, and in some person or body, the authority of final decision. . . . But the fundamental rights to life, liberty, and the pursuit of happiness, considered as individual possessions, are secured by those maxims of constitutional law . . . . For, the very idea that one man may be compelled to hold life, or the means of living, or any material right

essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit should be granted.

Respectfully submitted,

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Appendix A

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 7672.

Commodity Credit Corporation,
Appellant,

versus

D. Woodrow Worthington,
Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, AT RALEIGH.

(Argued October 10, 1958. Decided January 21, 1959.)

Before SOBELOFF, Chief Judge, and SOPER and HAYNSWORTH, Circuit Judges.

Lionel Kestenbaum, Attorney, Department of Justice, (George Cochran Doub, Assistant Attorney General; Julian T. Gaskill, United States Attorney, and Samuel

D. Slade, Attorney, Department of Justice, on brief) for Appellant, and Charles Landrum, Jr., and T. Chandler Muse (E. R. Denney, and Cameron S. Weeks, on brief) for Appellee.

SOBELOFF, Chief Judge:

An action for a declaratory judgment was brought in the District Court by D. Woodrow Worthington, the appellee here, to invalidate Commodity Credit Corporation's decision not to approve the extension of tobacco price supports through any warehouse operated by him or in which he had any interest. The court sustained Commodity's decision in regard to those warehouses which Worthington actually managed or operated, but invalidated the decision insofar as it applied to warehouses merely owned by him and operated by wholly independent lessees. Commodity appeals from the latter part of the District Court's ruling.

For the purpose of stabilizing farm income and prices, the Commodity Credit Corporation was created as an agency and instrumentality of the United States within the Department of Agriculture. 15 U.S.C.A. 714. Among the corporation's specific powers is the power to support farm prices through the purchase of farm commodities. In the performance of its purchasing and selling operations, 15 U.S.C.A. 714c directs that "'. . . the Corporation shall, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, utilize the usual and customary channels, facilities, and arrangements of trade and commerce."

In accordance with this provision, tobacco price supports have been made available through the regular tobacco auction warehouses. Farmer cooperatives have been established in the various tobacco belts, and Commodity enters into contracts to lend them money to buy in tobacco upon which the established support price has not been bid by the regular buyers. Tobacco so purchased is held in the hope of a rise in the market price and a resale at the support price level or higher.

The cooperatives, in turn, contract with auctioneers to offer price supports through their respective warehouses. These contracts provide that if commercial buyers fail to bid enough on a particular basket of tobacco, the auctioneer will "knock it down" to the cooperative. No matter who buys the tobacco, whether a cooperative or a commercial tobacco company, the auctioneer advances the amount of the sale price to the farmer and is later reimbursed by the buyer. The result is that the auctioneer actually administers the extension of price supports, and the success of the entire program depends, in large measure, upon his diligence and integrity.

Contracts between cooperatives and auctioneers are subject to approval by Commodity. Invariably they specify certain duties which the auctioneer must perform. For example, he is required to keep accurate records, make correct payment according to grade, and advance price supports only upon tobacco under "within-quota" marketing cards which has been graded by federal inspectors. He is also required to take every reasonable precaution against the acceptance of unsound, damaged tobacco, or tobacco which has been nested, i. e., arranged to conceal

foreign matter or leaves of inferior grade, quality or condition.

While the Government is entitled to recourse through the cooperatives against the warehouseman in the event of loss through purchase of misgraded or mislabelled tobacco, the success of the entire program depends upon the orderly and responsible marketing of tobacco, and Commodity Credit Corporation certainly has a sufficient interest to justify its insistence that the warehouses be honestly operated.

Reports of irregularities committed by Worthington in the administration of price supports, first reached the Department of Agriculture as early as the end of the 1947 marketing season. A series of violations over the next several years resulted in his criminal conviction on March 26, 1954, on thirty-one counts of altering inspection certificates and nesting, so that inspection did not reveal concealed inferior tobacco; and on March 2, 1956, on fourteen counts of falsely altering inspection certificates and falsely representing that tobacco had been inspected and weighed by federal inspectors.[1] These violations were persisted in despite repeated warnings by officials of the appellant and other units of the Department of Agriculture.

In April, 1954, after Worthington's first conviction,

[1] The March 26, 1954, conviction resulted in fines of $1000.00 each on the 31 counts and a one year jail sentence which was suspended on condition that the defendant would pay $25,000.00 of the fines.

For the March 2, 1956, conviction, Worthington was sentenced on April 26, 1956, to $14,000.00 in fines and a 12 months in prison. This prison sentence was also suspended and the defendant was placed on probation for two years.

Commodity concluded that to protect its funds, he had to be excluded from connection with the price support program. It was decided, however, not to bar him completely from contact with the tobacco warehouse business, but to allow loans still to be made available through warehouses owned by him provided he would lease them to wholly independent auctioneers on a fixed cash rental.

At that time the appellee owned ten warehouses, and he proceeded to lease them for the 1954-55 tobacco season. According to witnesses in the District Court, however, investigation by the Department of Agriculture's Investigation and Compliance Division revealed that, in violation of the conditions prescribed for such leasings, Worthington had rented one warehouse to a Mr. Hardy for a percentage of the profits, and had participated with a Mr. Bass in the operation and profits of another.

Commodity's witnesses testified that as a result of these investigations, its officers had serious doubts that any of the warehouses had actually been operated for the sole benefit of the respective lessees. They testified also that they had become convinced that as long as Worthington owned a warehouse he would continue in spite of his assurances to the contrary, to participate in the business therein conducted. Finally, on July 6, 1955, the decision was reached no longer to make price supports available to warehouses in which he had any interest.

In its opinion, the District Court declared as a general proposition " . . . . that as between equals one may not be arbitrarily and maliciously discriminated against by administrative governmental officers in the granting of privileges where the discrimination deprives that party

of a property right through the medium of competition or otherwise; . . ." In reviewing Commodity's refusal to deal with Worthington, as an auctioneer, the Court said:

> "But in the present case the plaintiff's reputation and past conduct clearly indicate that he is not equal to other tobacco warehouse operators receiving price supports; for his past conduct and reputation indicate a lack of integrity which has manifested itself in the past management (and which the defendant may reasonably presume will manifest itself in the future management) of a tobacco warehousing business. The plaintiff's inequality is the result of his own acts, made, presumably, with knowledge of the law. Hence the refusal of price supports to a tobacco warehouse business which the plaintiff controls or manages, de jure or de facto, is a result of his own activity, and is not arbitrary or without foundation. The administrative decision in issue, to that extent, does not deny the plaintiff due process of law."

However, the court voided Commodity's decision insofar as it refused price supports to any warehouse business carried on by an independent lessee in a warehouse owned by Worthington. As a warehouse owner or landlord, Worthington was held equal to others, the court deeming the plaintiff's identity in that capacity "wholly irrelevant to the business operations and the purposes of the defendant corporation."

In its latter ruling, we think the District Court erred. During the years preceding his exclusion as an auctioneer, Worthington's conduct was so reprehensible that a strong argument could well have been made as early as 1954 for

refusing price supports to warehouses in which he had any interest. At that time Commodity would not have been unreasonable in concluding that as a landlord this man would seek to control the auction businesses of his lessees and to repeat his fraudulent conduct whenever he found it to his advantage. Apparently, however, Commodity did not draw this inference then; or if it did, it may have doubted its power to bar all connection by Worthington with warehousing in order to safeguard price support moneys. Worthington was permitted to retain ownership of his warehouses upon his promise to lease to completely independent auctioneers and to refrain from partaking in their activities and sharing in their ventures. Almost at once, it became clear that he would not abide by these restrictions. Despite his pledges to remain only a landlord, Commodity soon learned that Worthington in fact continued actively to participate in the auction businesses. Such was the finding of the District Judge.

While the District Court was correct in saying that the identity of an *independent* warehouse owner is wholly irrelevant to the business operations and purposes of Commodity, Worthington's conduct patently demonstrated that he could not be trusted to separate himself from the business conducted on his premises and from its temptations. The trial judge acknowledged the hazard involved, by saying:

> "But the plaintiff's position must be that of pure landlord, having no interest direct or indirect in the actual operation of the business, and any reasonable doubt as to this might justify a refusal or withdrawal of price supports to a business carried on in the plaintiff's warehouse."

The net effect of the District Court's order is to give Worthington yet "another chance." In light of his record of repeated gross and willful misconduct when afforded earlier chances, such an order would require government officials to monitor continuously the operations of any warehouse in which Worthington had an interest; or to face the risk, amounting to probability, of the misuse of public funds. The court, we think, was in error in restricting the agency to a choice between these alternatives. After its frustrating experience with Worthington, refusal to administer the program through him cannot be said to be unfounded, malicious or arbitrary.

We are simply deciding on the record before us that Commodity's action is not shown to have been improper. We do not preclude the possibility of further representations by the appellee to the agency with a view to revision of its present order. In that event, its course should be governed by circumstances as they may then exist.

In its brief and oral argument, Commodity contended that the appellee had no standing to sue and that Congress did not subject to judicial review Commodity's exercise of discretion in administering price supports—in short, that no justiciable issue has been raised. It relied on such cases as *Tennessee Electric Power Co.* v. *T. V. A.*, 306 U. S. 118 (1939); *Alabama Power Co.* v. *Ickes*, 302 U. S. 464 (1938); *Kansas City Power and Light Co.* v. *McKay*, 225 F.2d 924 (D.C. cir. 1955); and *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113 (1940). Subsidiary questions of administrative law were also raised. In a case as plain as this, we find it unnecessary to determine whether in other circumstances, involving a showing of abuse, Commodity's

action would be judicially reviewable.

Reversed and Remanded for the entry of judgment not inconsistent with this opinion.

Judgment

Filed and Entered January 21, 1959.

UNITED STATES COURT OF APPEALS
For The Fourth Circuit

No. 7672

Commodity Credit Corporation,
Appellant,

versus

D. Woodrow Worthington,
Appellee.

APPEAL FROM the United States District Court for the Eastern District of North Carolina.

THIS CAUSE came on to be heard on the record from the United States District Court for the Eastern District of North Carolina, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the United States District Court for the Eastern District of North Carolina, at Raleigh, for the entry of judgment not inconsistent with the opinion of the Court filed herein.

January 21, 1959.

SIMON E. SOBELOFF
Chief Judge, Fourth Circuit.

Appendix B

UNITED STATES CODE ANNOTATED, TITLE 28, Judiciary and Judicial Procedure, CHAPTER 151—

DECLARATORY JUDGMENTS.

§ 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such. As amended Aug. 28, 1954, C. 1033, 68 Stat. 890; July 7, 1958, Pub.L. 85-508, § 12(p), 72 Stat. 349. (Page 133 Cumulatjve Annual Pocket Part)

UNITED STATES CODE ANNOTATED, TITLE 7, Agriculture, CHAPTER 35A—PRICE SUPPORT OF AGRICULTURAL COMMODITIES.

The pertinent provisions of the Agricultural Act of 1949, 63 Stat. 1051, as amended, 7 U. S. C. A. 1421, et seq., are as follows:

Section 101 (7 U. S. C. A. 1441).

The Secretary of Agriculture (hereinafter called the "Secretary") is authorized and directed to make available

through loans, purchases, or other operations, price support to cooperators for any crop of any basic agricultural commodity, if producers have not disapproved marketing quotas for such crop, at a level not in excess of 90 per centum of the parity price of the commodity nor less than the level provided in subsections (a), (b), and (c) as follows:

* * *

(c) For tobacco, if marketing quotas are in effect, the level of support shall be 90 per centum of the parity price.

* * *

Section 401 (7 U. S. C. A. 1421).

(a) The Secretary shall provide the price support authorized or required herein through the Commodity Credit Corporation and other means available to him.

(b) Except as otherwise provided in this Act, the amounts, terms, and conditions of price support operations and the extent to which such operations are carried out shall be determined or approved by the Secretary. ****

(c) Compliance by the producer with acreage allotments, production goals and marketing practices (including marketing quotas when authorized by law), prescribed by the Secretary, may be required as a condition of eligibility for price support. * * * *

Section 403 (7 U. S. C. A. 1423).

Appropriate adjustments may be made in the support price for any commodity for differences in grade, type,

staple, quality, location, and other factors. Such adjustments shall, so far as practicable, be made in such manner that the average support price for such commodity will, on the basis of the anticipated incidence of such factors, be equal to the level of support determined as provided in this Act. * * *

Section 405 (7 U. S. C. A. 1425).

No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan made under authority of this Act unless such loan was obtained through fraudulent representations by the producer. This provision shall not, however, be construed to prevent the Commodity Credit Corporation or the Secretary from requiring producers to assume liability for deficiencies in the grade, quality, or quantity of commodities stored on the farm or delivered by them, for failure properly to care for and preserve commodities, or for failure or refusal to deliver commodities in accordance with the requirements of the program.

Section 412 (7 U. S. C. A. 1429).

Determinations made by the Secretary under this Act shall be final and conclusive: *Provided*, That the scope and nature of such determinations shall not be inconsistent with the provisions of the Commodity Credit Corporation Charter Act.

UNITED STATES CODE ANNOTATED, TITLE 15, Commerce and Trade, CHAPTER 15—COMMODITY

CREDIT CORPORATION.

The pertinent provisions of the Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended, 15 U. S. C. A. 714, et. seq., are as follows:

Section 4 (15 U. S. C. A. 714b).

GENERAL POWERS—The Corporation—

* * * *

(c) May sue and be sued, but no attachment, injunction, garnishment or other similar process, mesne or final, shall be issued against the Corporation or its property. * * * The defendant in any suit by or against the Corporation may plead, by way of set-off or counterclaim, any cause of action, whether arising out of the same transaction or not, which would otherwise be barred by such limitation if the claim upon which the defendant's cause of action is based had not been barred prior to the date that the plaintiff's cause of action arose: *Provided,* That the defendant shall not be awarded a judgment on any such set-off or counterclaim for any amount in excess of the amount of the plaintiff's claim established in the suit. All suits against the corporation shall be tried by the Court without a jury. Notwithstanding any other provision of this Act, the Federal Tort Claims Act (Public Law 601, 79th Cong.) shall be applicable to the Corporation. Any suit by or against the United States as the real party in interest based upon any claim by or against the Corporation shall be subject to the provisions of this subsection (c) to the same extent as though such suit were by or against the Corporation, except that (i) any such suit against the United States based upon any claim of the type enumerated in

title 28, section 1491, of the United States Code, may be brought in the United States Court of Claims, and (2) no such suit against the United States may be brought in a district court unless such suit might, without regard to the provisions of this Act, be brought in such court.

* * * *

(g) May enter into and carry out such contracts or agreements as are necessary in the conduct of its business.

* * * *

(h) May contract for the use, in accordance with the usual customs of trade and commerce, of plants and facilities for the physical handling, storage, processing, servicing, and transportation of the agricultural commodities subject to its control. The Corporation shall have power to acquire personal property necessary to the conduct of its business but shall not have power to acquire real property or any interest therein except that it may (a) rent or lease office space necessary for the conduct of its business and (b) acquire real property or any interest therein for the purpose of providing storage adequate to carry out effectively and efficiently any of the Corporation's programs, or of securing or discharging obligations owing to the Corporation or of otherwise protecting the financial interest of the Corporation: *Provided*, That the authority contained in this subsection (h) shall not be utilized by the Corporation for the purpose of acquiring real property, or any interest therein, in order to provide storage facilities for any commodity unless the Corporation determines that existing privately owned storage facilities for such commodity in the area concerned are not adequate: * * *

* * *

(j) Shall determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed and paid.

* * *

(l) May make such loans and advances of its funds as are necessary in the conduct of its business.

(m) Shall have such powers as may be necessary or appropriate for the exercise of the powers specifically vested in the Corporation, and all such incidental powers as are customary in corporations generally * * *

Section 5 (15 U. S. C. A. 714c).

SPECIFIC POWERS.—In the fulfillment of its purposes and in carrying out its annual budget programs submitted to and approved by the Congress pursuant to the Government Corporation Control Act (31 U. S. C., 1940 edition, Supp. V, 841), the Corporation is authorized to use its general powers only to—

(a) Support the prices of agricultural commodities through loans, purchases, payments, and other operations.

* * *

(g) Carry out such other operations as the Congress may specifically authorize or provide for.

In the Corporation's purchasing and selling operations with respect to agricultural commodities (except sales to other Government agencies), and in the warehousing

transporting, processing, or handling of agricultural commodities, the Corporation shall, to the maximum extent practicable consistent with the fulfillment of the Corporation's purposes and the effective and efficient conduct of its business, utilize the usual and customary channels, facilities, and arrangements of trade and commerce.

Section 12 (15 U. S. C. A. 714j).

UTILIZATION OF ASSOCIATIONS AND TRADE FACILITIES.—The Corporation may, in the conduct of its business, utilize on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled cooperative associations, and trade facilities.